

Proceeding: **IN THE MATTERS OF AMENDMENT OF PARTS OF THE COMMISSION'S R** Record 1 of 1  
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Submission Type: **CO** Submission Status: **ACCEPTED** Viewing Status: **UNRESTRICTED**  
Subject:  
DA Number: Exparte Late Filed: File Number:  
Calendar Date Filed: **09/23/1998 5:24:05 PM** Date Disseminated: Filed From: **INTERNET**  
Official Date Filed: **09/23/1998** Date Released/Denied: Initials:  
Confirmation # **1998923954827** Date Filed:

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**BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.**

In the Matter of	)	
	)	
	)	
PCIA Request for Removal or	)	DA 98-1687
Streamlining of Regulations	)	
	)	
Biennial Regulatory Review -- Amendment	)	WT Docket No. 98-20
of Parts 0, 1, 13, 22, 24, 26, 27, 80,	)	
87, 90, 95, 97, and 101 of the	)	
Commission's Rules to Facilitate the	)	
Development and Use of the Universal	)	
Licensing System in the Wireless	)	
Telecommunications Services	)	
	)	
Forbearance from Applying Provisions of	)	WT Docket No. 98-100
the Communications Act to Wireless	)	
Telecommunications Carriers	)	

**COMMENTS OF WINSTAR COMMUNICATIONS, INC.**

WinStar Communications, Inc. ("WinStar"), by its attorneys, hereby submits its comments in the above-captioned proceedings.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY.**

WinStar, through its various subsidiaries, is the largest licensee of spectrum in the 38.6-40.0 GHz band ("39 GHz band"), the winner of fifteen LMDS licenses at the

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<sup>1</sup> On July 31, 1998, the Personal Communications Industry Association ("PCIA") submitted a letter ("PCIA Letter") to the Wireless Telecommunications Bureau ("Bureau") concerning potential streamlining or elimination of certain wireless regulations, including regulations contained in Part 101. The Bureau plans to incorporate comments on the PCIA Letter into the record of its Universal Licensing System ("ULS") and Wireless Forbearance proceedings. Public Notice of the PCIA Letter appeared in the Federal Register on September 8, 1998. 63 Fed. Reg. 47460 (Sept. 8, 1998).

recent LMDS auction, and the licensee of limited amounts of spectrum in other bands. WinStar uses its wireless licenses to provide a wide array of facilities-based voice and data telecommunications services and is building a unique "national local" network to provide consumers with an alternative to the incumbent local exchange carriers ("ILECs").

WinStar supports the Federal Communications Commission's ("Commission") efforts to streamline its wireless regulations and eliminate regulations that are burdensome or no longer serve the public interest.<sup>2</sup> In addition, WinStar applauds the Commission's prompt implementation of its Universal Licensing System ("ULS") proposal and consolidation of the wireless licensing rules.<sup>3</sup> However, WinStar believes that the Commission should go further in reducing the regulatory burdens on wireless carriers. Consequently, WinStar supports PCIA's proposals to eliminate or modify specific wireless regulations.

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<sup>2</sup> Section 11 of the Communications Act requires the Commission to review all of its regulations applicable to providers of telecommunications service in every even-numbered year to determine whether the regulations are no longer necessary in the public interest as the result of meaningful economic competition between providers and whether such regulations should be repealed or modified. 47 U.S.C. § 161.

<sup>3</sup> See "Commission Adopts Rules to Implement Universal Licensing System For Wireless Services," Report No. WT 98-34 (Sept. 17, 1998) ("ULS Order"). WinStar notes that at the time of this filing, the text of the ULS Order has not yet been released. Consequently, WinStar recognizes that some of the proposals made herein may be unnecessary to the extent that these proposals already are implemented in the ULS Order.

Prompt action by the Commission on PCIA's proposals will enable wireless carriers to compete on equal footing with wireline carriers and bring further competition to the local loop.<sup>4</sup> In addition, WinStar specifically recommends that the Commission take the following actions:

- extend the conditional licensing provisions of Section 101.31(e) to all Part 101 licensees;
- eliminate the discontinuance of service regulations contained in Section 101.305;
- revise Section 101.15 to permit all wireless licensees to file for renewal at any point prior to the expiration of their license; and
- exempt geographic area licensees from Part 101 information-posting and record-keeping requirements.

## **II. THE COMMISSION SHOULD EXTEND CONDITIONAL LICENSING TO ALL PART 101 LICENSEES.**

WinStar supports extending the conditional license provision contained in Section 101.31(e) to all Part 101 fixed microwave licensees; currently, this provision applies only to specified bands. Permitting conditional licensing for all fixed microwave licensees "will allow the microwave industry to operate more efficiently, as it . . . will provide licensees greater flexibility in coordinating and

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<sup>4</sup> Where rule elimination and streamlining proposals do not require the Commission to compile a rulemaking record, WinStar supports PCIA's request for immediate action by the Commission. See 47 C.F.R. § 1.412(b)(5) (stating that rule changes involving "[r]ules of Commission . . . procedure, or practice" ordinarily do not require prior notice); 47 C.F.R. § 1.412(c) (stating that "[r]ule changes may . . . be adopted without prior notice in any situation in which the Commission for good cause finds that notice and public procedures are . . . unnecessary, or contrary to the public interest").

consolidating construction projects."<sup>5</sup> This modification of the rules should not be considered controversial as the Commission already has acknowledged that "[b]y allowing conditional operation for all fixed microwave license applicants, the additional step of seeking an STA is eliminated."<sup>6</sup> As such, the benefits of the Commission's conditional licensing scheme should be extended to all fixed microwave licenses.

**III. THE COMMISSION SHOULD ELIMINATE DISCONTINUANCE OF SERVICE REGULATIONS CONTAINED IN PART 101.**

WinStar agrees with PCIA's suggestion that the Commission eliminate the discontinuance of service regulations contained in Section 101.305 of the Commission's rules.<sup>7</sup> Section 101.305 is a Title II regulation requiring Part 101 licensees to notify the Commission of discontinuance, reduction, and impairment of service under a variety of circumstances. Under Section 10 of the Act, the Commission has the authority to forbear from applying any regulation or provision of the Act to any class of telecommunications carrier, including wireless carriers, if it finds that certain conditions are met.<sup>8</sup>

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<sup>5</sup> See Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, WT Docket No. 94-184, *Report and Order*, 11 FCC Rcd. 13449, at ¶ 27 (1996) ("Part 101 Order").

<sup>6</sup> See id. (emphasis added).

<sup>7</sup> See PCIA Letter at Appendix B-3.

<sup>8</sup> 47 U.S.C. § 160.

In light of the intense competition faced by new wireless entrants and the costs associated with construction and operation of new wireless facilities, the Commission should find that forbearance from the discontinuance of service regulations is justified.<sup>9</sup> As the Commission has previously recognized, "[a]fter investing time and financial resources in installing . . . microwave facilities, . . . licensees will have sufficient incentive to deploy operational traffic as soon as possible."<sup>10</sup> Licensees facing significant competition will also have strong incentives to ensure that the rates, terms, and conditions of service are reasonable because consumers who are dissatisfied can easily find another provider. Moreover, the requirements of Section 101.305 are unnecessarily burdensome, imposing additional obligations on carriers with no tangible benefit to the public. Hence, the Commission should forbear from enforcing these regulations and eliminate Section 101.305.

**IV. THE COMMISSION SHOULD MODIFY RULE 101.15 TO PERMIT ALL PART 101 LICENSEES TO FILE FOR RENEWAL AT ANY POINT PRIOR TO THE RENEWAL OF THEIR LICENSES.**

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<sup>9</sup> See Comments and Petition for Further Notice of Proposed Rulemaking of the Rural Telecommunications Group in WT Docket No. 98-100, at 5-6 (filed Aug. 3, 1998) (describing competition faced by LMDS licensees); Comments of the Personal Communications Industry Association in WT Docket No. 98-100, at 18-19 (filed Aug. 3, 1998) (suggesting forbearance from many regulatory requirements for LMDS licensees).

<sup>10</sup> Part 101 Order at ¶ 36.

WinStar supports consolidating the service-specific renewal rules into a single section in Part 1.<sup>11</sup> Specifically, WinStar supports replacing the current rule that governs renewal of Part 101 station licenses, 47 C.F.R. § 101.15, with a revised rule permitting all wireless licensees to file for renewal at any point before the expiration of their license. Under Section 101.15, licensees in the 39 GHz band must file for renewal eighteen months prior to the end of their license term while all other Part 101 licensees may file for renewal between 30 and 60 days prior to expiration. A revised rule would eliminate this disparate treatment. Moreover, revision of the Part 101 renewal rule would fulfill the Commission's goal of providing "regulatory symmetry among all wireless services" by ensuring that all wireless licensees are subject to similar renewal deadlines.<sup>12</sup>

**V. GEOGRAPHIC AREA LICENSEES SHOULD BE EXEMPTED FROM PART 101 INFORMATION-POSTING AND RECORD-KEEPING REQUIREMENTS.**

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<sup>11</sup> See Comments of WinStar Communications, Inc. in WT Docket No. 98-20, at 8-9 (filed May 22, 1998) ("WinStar ULS Comments"). This modification was proposed by the Commission in the ULS proceeding. See Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, WT Docket No. 98-20, *Notice of Proposed Rulemaking*, FCC 98-25, at Appendix C-36 (rel. Mar. 18, 1998) ("ULS Notice").

<sup>12</sup> ULS Notice at ¶ 56.

WinStar also recommends that the Commission create an exemption for geographic area licensees from the following provisions:

- 101.215, requiring licensees to post license information at each station;
- 101.217, requiring licensees to maintain records of transmitter measurements and maintenance checks for each station;
- 101.149(b), requiring 39 GHz licensees to post a service-area authorization at each station; and
- 101.59(d), requiring applicants for minor facility modifications to keep a complete copy of the application with the station license.

As stated in WinStar's ULS Comments and Reply Comments, these license-posting and record-keeping requirements are unduly burdensome for geographic licensees because such licensees maintain facilities at hundreds of customer sites.<sup>13</sup> Moreover, the benefits of these rules are minimal in the context of exclusive, area-wide licenses because interference problems are less prevalent for geographic area licensees than for site-specific licensees.<sup>14</sup>

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<sup>13</sup> See WinStar ULS Comments, at 9-10; Reply Comments of WinStar Communications, Inc. in WT Docket No. 98-20, at 3 (filed June 16, 1998).

<sup>14</sup> See WinStar ULS Comments at 10.



**VI. CONCLUSION.**

For the foregoing reasons, WinStar respectfully urges the Commission to take the actions outlined herein.

Respectfully submitted,

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Sept. 23, 1998

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CERTIFICATE OF SERVICE

I, Sophie J. Keefer, do hereby certify that on this 23rd day of September, 1998, copies of the foregoing "Comments of WinStar Communications, Inc." were delivered by hand (unless otherwise indicated) to the following parties:

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